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Fiscal Notes Prepared by the Missouri State Auditor's Office in 2003

<u>Fiscal Note Number</u>	<u>Date Received</u>	<u>Fiscal Note Description</u>	<u>Date Submitted to Secretary of State</u>
03-01	01-21-2003	Initiative Petition Relating to Consumer Clean Energy Act, Chapter 386 RSMo	02-18-2003
03-02	06-10-2003	Initiative Petition to Amend Revised Statutes Relating to Gambling on Floating Facilities on the White River in Rockaway Beach, Missouri	07-11-2003
03-03	11-18-2003	Proposed Constitutional Initiative Amendment Petition - Education and Health Care Protection - Version 1	12-11-2003
03-04	11-21-2003	Proposed Constitutional Initiative Amendment Petition - Education and Health Care Protection - Version 2	12-19-2003
03-05	11-21-2003	Proposed Statutory Initiative Petition - Education and Health Care Protection - Version 1	Withdrawn by Petitioner
03-06	11-26-2003	Proposed Statutory Initiative Petition - Education and Health Care Protection - Version 2	12-24-2003
03-07	12-11-2003	Proposed Constitutional Initiative Amendment Petition - Education and Health Care Protection - Version 3	01-08-2004



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MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (No. 03-01)

Subject

Initiative petition for a proposed change to Section 386, RSMo from Larry Rice regarding Consumer Clean Energy Act. (Received January 21, 2003)

Date

February 10, 2003

Description

The initiative petition amends Section 386.887 RSMo, which is currently known as the "Consumer Clean Energy Act" by deleting and inserting text throughout the section.

No text was amended to Sections 386.887.1, 386.887.2, and 386.887.10.

Section 386.887.3 requires the commission, in consultation with the Department of Natural Resources and retail electric suppliers, to develop a simple contract for eligible customer-generators and retail electric suppliers by January 1, 2005. Rates for electric energy generated by the customer-generator and sold to the retail electric supplier or its wholesale generator shall be set by the Missouri Public Service Commission considering the generation costs of the public utility, the rate charged the customer-generator, the public policy to encourage customer and citizens to generate electricity, and shall be equal to or greater than 5 cents per kilowatt hour.

Section 386.887.4(3) (c) requires the retail electric supplier to pay the customer-generator any credits owed but unused in the prior calendar year if the value of the electric energy generated by the customer-generator exceeds the value of the electric energy supplied by the retail electric supplier.

Section 386.887.5 requires the retail electric supplier to make available, at its expense, a net metering unit or units, which measure the electricity used by and provided by the customer-generator.

Section 386.887.6 removes the text in which the retail electric supplier notifies the commission when the total generating capacity of the customer-generators is equal to or in excess of the lesser of ten thousand kilowatts or one-tenth of one percent of the capacity necessary to meet the company's aggregate customer peak demand for the preceding calendar year.

Section 386.887.7 amends the text to require the commission to establish reasonable standards and requirements for the net metering units.

Section 386.887.8 requires the retail electric supplier to pay the cost of meeting the standards of Section 387.887.7 and the cost to install additional controls, to install additional metering, and to perform or pay for additional tests or analysis. The customer-generator, with an electric generation system meeting the requirements set forth by the Missouri Public Service Commission, shall not be required to install additional controls, pay any additional taxes, fees, or assessments, obtain any additional insurance, or conduct any tests.

Section 386.887.9 requires applications by a customer-generator for interconnection to the distribution system to meet the requirements established by the Missouri Public Service Commission.

Assumptions

The Missouri Public Service Commission assumes the proposed change to Section 386.887 will pay customer-generators more than avoided rates (not less than 5 cents per kilowatt hour), have the retail electric supplier provide for net metering, removes total participation limits, and refers safety and contract requirements to the Commission with less prescriptive language regarding retail electric supplier unit.

Currently, the retail electric supplier adopts rates, charges, conditions, and contract terms for the purchase from and sale of electric energy to customer-generators. Rates for electric energy generated by the customer-generator from a qualified net generating unit would be the avoided cost (time of use or nontime for use) of the generation used by the retail electric supplier to serve its other customers. A retail electric supplier is not required to provide net metering service to additional customer-generators after the date during any calendar year on which the total generating capacity of all customer-generators with qualified net metering units served by that retail electric suppliers is equal to or in excess of the lesser of ten thousand kilowatts or one-tenth of one percent of the capacity necessary to meet the company's aggregate customer peak demand for the preceding calendar year. Each qualified net metering unit must meet all applicable safety, performance, synchronization, interconnection and reliability standards established by the commission, the National Electrical Safety Code, National Electric Code, the Institute of Electrical, Electronics Engineers, and the Underwriters Laboratory. The cost of meeting the standards of Section 386.887.7 and the cost to install additional controls, to install additional metering, and to perform or pay for additional tests or analysis is paid by the customer-generator.

Information provided by the Missouri Public Service Commission indicated the following: Other state agencies or political subdivisions would be affected only to the degree that customer rates and taxes are affected by the described changes permitting customer-generators to interconnect and sell power back to their retail electric supplier. The impact (if any) to small businesses should be very small. It is not expected to have an impact on total state revenue since few customers are likely to participate in self-generation and those who do will generate relatively small amounts of power. Also,

customers who self-generate will pay significant taxes for the required equipment and construction of their systems.

The long-range implications would likely result in more customers choosing to install generation equipment and interconnect with their retail electric supplier as customer-generators which could bring up retail electric supplier's costs, which could eventually result in slightly higher rates for the general body of ratepayers. The estimated net effect on the Public Service Commission Fund, Federal Funds, and Local Funds is \$0.

Public comments and other input

No proponent or opponent submitted a proposed statement of fiscal impact.

Fiscal Note Summary

There appears to be no direct fiscal impact on state and local governments. The indirect fiscal impact on state and local governments, if any, is unknown.

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (No. 03-02)

Subject

Initiative Petition for a constitutional amendment from Missourians for Economic Opportunity regarding gambling on floating facilities on the White River in Rockaway Beach, Missouri. (Received June 10, 2003)

Date

June 30, 2003

Description

The initiative petition amends Article III of the Missouri Constitution by adding one new section, 39(g), to permit floating gambling facilities on the White River in Rockaway Beach, Missouri.

Games and contests of skill and games and contest of chance are authorized to be conducted on floating facilities on the White River within the city limits of Rockaway Beach, Missouri which will include artificial spaces that contain water and that are within 1000 feet of the closest edge of the main channel of such river. The floating facilities will be licensed and regulated consistent with all other floating facilities in the State of Missouri.

All state revenues derived from the conduct of all gaming activities on the floating facilities authorized under Section 39(g) will not be included within the definition of "total state revenues" in section 17 of article X of the Missouri Constitution and will stand appropriated without legislative action to the State Board of Education, Department of Elementary and Secondary Education (DESE). The monies derived will be expended and used annually by the DESE solely as follows:

- Fifty percent of the moneys so derived in the current year will be used to fund uniform salary supplement grants to all high quality teachers employed in priority schools.
- The remaining moneys so derived in the current year will be distributed to all priority school districts on a per pupil distribution basis for the purpose of capital improvements to education facilities in such priority school districts.

Assumptions

Currently, Article III, Section 39(e) of the Missouri Constitution authorizes riverboat gambling on only the Missouri and Mississippi Rivers. This includes artificial spaces that contain water and that are within 1000 feet of the closest edge of the main channel of

either of those rivers. The initiative petition would amend the constitution to include the White River in Rockaway Beach, Missouri as an additional place for gambling on floating facilities. In addition, Article III, Section 39(g) would define how the state revenues derived from the facility on the White River in Rockaway Beach, Missouri would be expended.

The State Gaming Commission (commission) indicated that any floating facility in Rockaway Beach, Missouri will be licensed and regulated by the commission consistent with all other floating facilities in the state, and the facility will pay the existing gaming tax of 20% of gross receipts and the existing \$2 admission fee. In addition, §313.812.10 RSMo requires that no license shall be issued to a floating facility unless the qualified voters of the local government approve of such activities in an election.

Commission officials conducted a preliminary market study regarding a hypothetical casino in Rockaway Beach, Missouri. The market study consisted of estimating the potential gaming population that resides in the region, the number of annual visits per gamer, and the average expenditure per visit. The gaming population was estimated by multiplying the adult population by the estimated propensity to gamble (the percentage of the population that will visit a casino during a year). The propensity estimates were based on figures from prior market studies conducted by The Innovation Group, formerly Urban Systems, Inc. The estimates for the number of annual visits were based on the relationship between drive time and gaming visits found in other Missouri markets. The average expenditure per visit estimates (Win Per Patron) were also based on current figures found in other similar markets in Missouri. The commission also considered the effect of tourism due to the close proximity to Branson, Missouri. Because this is new territory for the commission, there was no historical data available. Therefore, estimates were used with an emphasis towards conservatism. Due to the uncertainties involved with an estimate of this type, the commission used a range of +/- 10% for the analysis.

The 20% gaming tax and \$2 admission fee are divided between the state and local governments. Ninety percent of the gaming tax goes to the state and ten percent goes to the local entity (§313.822.1 RSMo). One dollar of the admission fee goes to the state and one dollar goes to the local entity (§313.835 RSMo, §313.820.1 RSMo). The range for gaming tax and admission fees include the following.

	<u>Lower</u>	<u>Baseline</u>	<u>Upper</u>
Gaming gross receipts (\$ thousands)	\$ 184,639	205,154	225,669
Gaming tax rate	<u>20%</u>	<u>20%</u>	<u>20%</u>
Gaming tax revenue (\$ thousands)	\$ 36,928	41,031	45,134
10% local share (\$ thousands)	\$ 3,693	4,103	4,513
90% state share (\$ thousands)	\$ 33,235	36,928	40,621

	<u>Lower</u>	<u>Baseline</u>	<u>Upper</u>
Number of patrons (thousands)	3,026	3,362	3,698
Admissions per patron ¹	<u>2.15</u>	<u>2.15</u>	<u>2.15</u>
Admissions (thousands)	6,505	7,228	7,951
Admission fee	\$ <u>2</u>	<u>2</u>	<u>2</u>
Admission fee revenue (\$ thousands)	\$ 13,010	14,456	15,902
\$1 local share (\$ thousands)	\$ 6,505	7,228	7,951
\$1 state share (\$ thousands)	\$ 6,505	7,228	7,951

Additional revenue to the state would include, depending on the size of the casino:

• Application fees	(one-time)	\$50,000 to 300,000
• License fees	(on-going)	61,000 to 80,000
• License fees	(one-time)	<u>90,000</u> to <u>121,000</u>
Total additional state revenue		<u>\$201,000</u> <u>\$501,000</u>

Based on the information from the State Gaming commission, the total direct gaming revenue will be:

	<u>Low</u>	<u>High</u>
(\$ millions)		
State share of 20% gaming tax	\$ 33.2	\$ 40.6
State share of \$2 admission fee	6.5	7.9
Additional state revenue	<u>.2</u>	<u>.5</u>
Total state revenue	<u>\$ 39.9</u>	<u>\$ 49.0</u>
Local share of 20% gaming tax	\$ 3.7	\$ 4.5
Local share of \$2 admission fee	<u>6.5</u>	<u>7.9</u>
Total local revenue	<u>\$ 10.2</u>	<u>\$ 12.4</u>

The commission also estimated the additional cost to the state required to regulate a new casino. These costs are passed on to the casino and are considered private entity costs. Thus the net effect to the state is zero because the revenue will offset the original cost. One time costs will vary depending on the actual number of highway patrol officers assigned to the casino (cars, radios, guns, protective vests, Kobetron machine, etc).

Officials of the Department of Elementary and Secondary Education assume the new distribution of money to priority school districts will require additional programming to make the distribution possible. Costs associated with this additional programming would not likely be significant. The criteria for a priority school district is defined in §160.720 RSMo. Currently, no priority schools have been identified. The department plans to

¹ The 2.15 admissions per patron assumes a patron stays at the gambling facility an average of 4.3 hours. The facility pays the \$2 admission fee for each two-hour stay per patron.

identify the first group of priority schools in December 2004 based on 2003 and 2004 MAP data.

Officials of the Department of Revenue assume there would be no additional administrative impact and they were unable to determine any impact on state taxes deferring to the State Gaming Commission. Officials of the Department of Economic Department assume, "no fiscal impact". Officials of the Department of Natural Resources assume, "no direct fiscal impact". Officials of the Department of Conservation assume, "no significant fiscal impact".

The State Auditor's Office is required to annually review local property tax rates of taxing authorities in the state. The primary objective of the review is to determine whether local governing boards have levied taxes in accordance with state law, and in particular, to determine whether local rates have been adjusted to ensure that property reassessments are revenue neutral. Reassessments of existing property are not intended to increase tax revenue but to equitably reallocate the existing tax burden based on the relative value of property owned by taxpayers.

Due to a number of uncertainties, the property tax rate and revenue cannot be estimated at this time. The State Auditor's Office has no authority to determine or review individual property tax assessments and therefore cannot estimate the changes in assessed valuation for this project.

Public comments and other input

The State Auditor's Office contacted or obtained information from the Gaming Commission, the Department of Elementary and Secondary Education, the Department of Revenue, the Department of Economic Development, the Department of Natural Resources, and the Department of Conservation. Douglas S. Stone of Polsinelli, Shalton, and Welte representing the Missourians for Economic Opportunity, Inc. submitted comments and data as a proponent of the initiative petition.

Fiscal Note Summary

This constitutional amendment will generate annual direct gaming revenue ranging from \$39.9 to \$49.0 million for the state and \$10.2 to \$12.4 million for the local government, subject to local voter approval and licensing by the State Gaming Commission. The amount of indirect revenue or expense, if any, is unknown.

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (No. 03-03r)

Subject

Initiative petition for a constitutional amendment from Husch & Eppenberger, LLC regarding Education and Health Care Protection – Version 1.
(Received November 18, 2003)

Date

December 9, 2003

Description

The initiative petition proposes to amend Article III of the Missouri Constitution by adding one new section, 38(d), to assure that there will not be spending reductions in the basic state investment in education and the basic state investment in health care during periods of economic downturns and lessened general revenues.

Within thirty-five days after this amendment is adopted and thereafter by September 15 of each fiscal year, the commissioner of administration shall determine whether the basic state resources per person for the just completed year are greater or less than the inflation adjusted basic state resources per person for the fiscal year ending June 30, 2001. If they are greater, the commissioner of administration shall certify to the director of revenue and the secretary of state that no fiscal emergency exists and any temporary additional sales and use taxes which are then in effect shall cease to be effective at the end of the day on December 31 following such determination. If they are less, a fiscal emergency shall be deemed to exist and the commissioner of administration shall determine the fiscal deficiency amount and shall issue a certification to the director of revenue.

Within thirty days after the issuance of the certification, the director of revenue shall determine the minimum sales and use tax rate to the nearest one-tenth of one cent, but not more than one cent, that would be needed to generate revenues covering the fiscal deficiency amount and shall issue a certification of such minimum sales and use tax rate.

The temporary additional sales and use taxes shall become effective at the end of the day on the first day of January and shall continue in effect until the end of the day on the following December 31. However, if this section is adopted after the primary election in calendar year 2004 the temporary additional sales and use taxes shall become effective at the beginning of the day on April 1, 2005, and shall continue until the end of the day on December 31, 2005.

The rate certified by the director of revenue shall stand imposed and levied without legislative action. When the commissioner of administration has certified that no fiscal

emergency exists, any temporary additional sales and use taxes then in effect shall stand repealed without legislative action on December 31 following the date of certification.

During January of 2005 or January of any year thereafter while any temporary additional sales and use taxes are in effect, the general assembly by legislative action taken prior to February 1 by a two-thirds vote of the members elected to each house, signified by the presiding officer of each house signing the legislative action in open session may determine and order that either the temporary additional sales and use taxes shall cease to be effective as of the end of the day on March 31st after such legislative action or the rate of the temporary additional sales and use tax shall be lowered to a specified lower tax rate to be effective at the beginning of the day on April 1 after the legislative action.

The revenues received by the state shall be deposited in the Education and Health Care Protection Trust Fund which would be created within the state treasury and used solely to fund authorized programs within the basic investment in education and health care. The revenues received shall not be diverted or used for any other purpose.

The provisions of this Amendment are designed to ensure that economic downturns will not reduce the state's support for elementary and secondary education and health care services for the elderly and disabled and children and their parents and caregivers who are enrolled in the state's Medicaid program.

The general assembly shall appropriate annually and/or by supplemental appropriation from the Education and Health Care Protection Trust Fund sufficient monies to assure the authorized state programs encompassed within the basic state investment in education and basic state investment in health care are fully funded. Any monies shall be expended and shall not be subject to withholding or control of the rate of expenditure. Monies in the Education and Health Care Protection Trust Fund which are not appropriated and expended shall not lapse into general revenue.

The general assembly in making appropriations shall not divert revenues from or reduce the level of state funding from other revenue sources for education and health care which was in effect for the just completed year because of the funds in the Education and Health Care Protection Fund.

The commissioner of administration shall establish the books to account for revenues received and for funds appropriated and expended. The state auditor shall provide an annual audit as a result of taxes which become effective pursuant to this Amendment. The state auditor or any taxpayer may bring an action in the circuit court of Cole County against the commissioner of administration and/or the director of revenue to determine whether the certification or determination made is unlawful because it is arbitrary, capricious, and abuse of discretion or not authorized by law.

Any temporary additional sales and use taxes shall not be a part of total state revenues and shall not be an expense of the state government. The provision of this amendment

shall terminate at the end of the day on December 31, 2010, unless a majority of the voters cast for the ballot question at the general election in 2010 for the Education and Health Care Protect Amendment to continue.

Assumptions

This initiative petition requires the commissioner of administration to annually determine and certify if the state has a fiscal emergency. If a fiscal emergency does exist, the director of revenue will determine the temporary increase in sales and use tax (up to one cent) needed to generate revenues covering the fiscal deficiency amount for the basic state investment in education and the basic state investment in health care. The general assembly has the option to lower the temporary sales and use tax with a two-thirds vote of each house if action is taken by February 1. Revenues raised are dedicated for elementary and secondary education and health care services for the elderly and disabled and children and their parents and caregivers who are enrolled in the state's Medicaid program. The amendment will terminate on December 31, 2010, unless the voters approve a continuation.

Based on the information from the Office of Administration, the Amendment mandates that a sales and use tax of up to one cent be imposed if the conditions for a "fiscal emergency" are met. The following chart provides an estimate of what an additional one cent and one-tenth of a cent general revenue sales tax would yield in Fiscal Years 2004 – 2007, based upon the following assumptions:

1. Each fiscal year shown is a full year amount.
2. The Fiscal Year 2004 estimate is based on the Governor's revised July 2003 general revenue estimate.
3. Sales tax growth in Fiscal Year 2005 and beyond is assumed to be 2.5%.

Fiscal Year		General Revenue Sales Tax (millions)	Maximum Revenue Yield From a One Cent Increase Full Year	Minimum Revenue Yield From a One-Tenth of a Cent Increase Full Year
2003	Actual	\$1,799.3		
2004*	Estimate	\$1,826.6	\$608.9	\$60.89
2005**	Estimate	\$1,872.3	\$624.1	\$62.41
2006	Estimate	\$1,919.1	\$639.7	\$63.97
2007	Estimate	\$1,967.0	\$655.7	\$65.57

* Although the first year the tax could go into effect is FY 2005, the FYs 2003-2004 are provided for informational purposes.

** The maximum time the tax could be in effect for FY 2005 is six months, but the full year amount is shown for informational purposes.

The total annual costs would be approximately \$104,000 (Department of Revenue \$69,000 and State Auditor's Office \$35,000). The Secretary of State's Office indicated they would anticipate a cost but the amount is unknown.

Officials from the Department of Revenue indicate the Constitutional amendment will have an administrative impact to the department. Funding would be needed for the notification of 150,000 businesses each year at an approximate cost of \$40,200 per year. If the rate is increased in January and then decreased in April, this amount and number of mailings would double. In addition to the notification mailing costs, new sales tax vouchers would need to be printed and mailed at a cost of \$20,263 (printing cost) and \$8,510 (average mailing cost). The total cost for the Department of Revenue would be approximately \$69,000 ($\$40,200 + \$20,263 + \$8,510 = \$68,973$). In addition, temporary additional sales and use taxes would become effective at the end of the day on the first day of January causing taxpayers to be responsible for the collection and remittance of two different tax rates for the month of January. Officials also indicated that any costs associated with this proposal will only be required if the Commissioner of Administration declares a fiscal emergency exists, or a subsequent decrease in the sales tax rate if the Commissioner of Administration declares a fiscal emergency no longer exists. If there is no fiscal emergency, there would be no increase or decrease in the sales tax rate, and therefore, would be no fiscal impact to the Department. Since it is unknown as to whether there will be an increase and a decrease in the sales tax rate, the costs associated with this proposal may be unknown as well.

Officials from the Secretary of State's Office indicate the Constitutional amendment proposed in this initiative petition could ultimately cause affected state agencies to promulgate rules. These rules would be published in the Missouri Register and the Code of State Regulations. Based on experience with other divisions, the rules, regulations and forms issued by the Department of Revenue could require as many as 28 pages in the Code of State Regulations. For any given rule, roughly half again as many pages are published in the Missouri Register as in the Code because cost statements, fiscal notes and the like are not repeated in the Code. These costs are estimated. The estimated cost of a page in the Missouri Register is \$23.00. The estimated cost of a page in the Code of State Regulations is \$27.00. The actual cost could be more or less than the numbers given. The impact of the Constitutional amendment in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded or withdrawn.

The State Auditor's Office would be required to perform an annual audit of the Education and Health Care Protection Fund if the commissioner of administration declares a fiscal emergency. This audit requirement would require additional audit resources. It is estimated that this audit requirement would require 1,000 staff hours and 150 manager hours to complete. This audit would cost approximately \$35,000.

Officials from the Office of Administration assume the Amendment would require the commissioner of administration to perform some of the calculations that the Amendment requires. These calculations pertain to normal budget and financial matters. Thus, there would be no explicit additional costs imposed on the Office of Administration. Budget and Planning indicated the initiative petition should not result in additional costs or savings to that office. Officials from Department of Social Services – Division of Medical Services (DMS) indicated there will be no fiscal impact. Officials from the Department of Elementary and Secondary Education assume the proposal will have no impact on the Department.

Public comments and other input

The State Auditor's Office contacted or obtained information from the Committee on Legislative Research – Oversight Division, the Department of Elementary and Secondary Education, the Department of Revenue, the Department of Social Services, the Office of Administration, the Governor's Office, the Secretary of State's Office, the Speaker of the House of Representatives Office, and the President Pro Tempore of the Senate. Bradley J. Ketcher representing The Policy Group, Inc submitted comments as a proponent of the initiative petition.

Fiscal Note Summary

The constitutional amendment could generate net sales and use tax revenues only if the conditions for a fiscal emergency exist. The range of sales and use tax generated would be dependent on the level of fiscal emergency, as determined by the drop in revenue. The indirect fiscal impact on state and local governments, if any, is unknown.

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (No. 03-04)

Subject

Initiative petition for a constitutional amendment from Husch & Eppenberger, LLC regarding Education and Health Care Protection – Version 2.
(Received November 21, 2003)

Date

December 11, 2003

Description

The initiative petition proposes to amend Article III of the Missouri Constitution by adding one new section, 38(d), to assure that there will not be spending reductions in the basic state investment in education and the basic state investment in health care during periods of economic downturns and lessened general revenues.

Within thirty-five days after this amendment is adopted and thereafter by September 15 of each fiscal year, the commissioner of administration shall determine whether the basic state resources per person for the just completed year are greater or less than the inflation adjusted basic state resources per person for the fiscal year ending June 30, 2001. If they are greater, the commissioner of administration shall certify to the director of revenue and the secretary of state that no fiscal emergency exists and any temporary additional sales and use taxes which are then in effect shall cease to be effective at the end of the day on December 31 following such determination. If they are less, a fiscal emergency shall be deemed to exist and the commissioner of administration shall determine the fiscal deficiency amount and shall issue a certification to the director of revenue.

Within thirty days after the issuance of the certification, the director of revenue shall determine the minimum sales and use tax rate to the nearest one-tenth of one cent, but not more than one cent, that would be needed to generate revenues covering the fiscal deficiency amount and shall issue a certification of such minimum sales and use tax rate.

The temporary additional sales and use taxes shall become effective at the end of the day on the first day of January and shall continue in effect until the end of the day on the following December 31. However, if this section is adopted after the primary election in calendar year 2004 the temporary additional sales and use taxes shall become effective at the beginning of the day on April 1, 2005, and shall continue until the end of the day on December 31, 2005.

The rate certified by the director of revenue shall stand imposed and levied without legislative action. When the commissioner of administration has certified that no fiscal

emergency exists, any temporary additional sales and use taxes then in effect shall stand repealed without legislative action on December 31 following the date of certification.

During January of 2005 or January of any year thereafter while any temporary additional sales and use taxes are in effect, the general assembly by legislative action taken prior to February 1 by a two-thirds vote of the members elected to each house, signified by the presiding officer of each house signing the legislative action in open session may determine and order that either the temporary additional sales and use taxes shall cease to be effective as of the end of the day on March 31st after such legislative action or the rate of the temporary additional sales and use tax shall be lowered to a specified lower tax rate to be effective at the beginning of the day on April 1 after the legislative action.

The revenues received by the state shall be deposited in the Education and Health Care Protection Trust Fund which would be created within the state treasury and used solely to fund authorized programs within the basic investment in education and health care. The revenues received shall not be diverted or used for any other purpose.

The provisions of this Amendment are designed to ensure that economic downturns will not reduce the state's support for elementary and secondary education and health care services for the elderly and disabled and children and their parents and caregivers who are enrolled in the state's Medicaid program.

The general assembly shall appropriate annually and/or by supplemental appropriation from the Education and Health Care Protection Trust Fund sufficient monies to assure the authorized state programs encompassed within the basic state investment in education and basic state investment in health care are fully funded. Any monies shall be expended and shall not be subject to withholding or control of the rate of expenditure. Monies in the Education and Health Care Protection Trust Fund which are not appropriated and expended shall not lapse into general revenue.

The general assembly in making appropriations shall not divert revenues from or reduce the level of state funding from other revenue sources for education and health care which was in effect for the just completed year because of the funds in the Education and Health Care Protection Fund.

The commissioner of administration shall establish the books to account for revenues received and for funds appropriated and expended. The state auditor shall provide an annual audit as a result of taxes which become effective pursuant to this Amendment. The state auditor or any taxpayer may bring an action in the circuit court of Cole County against the commissioner of administration and/or the director of revenue to determine whether the certification or determination made is unlawful because it is arbitrary, capricious, and abuse of discretion or not authorized by law.

Any temporary additional sales and use taxes shall not be a part of total state revenues and shall not be an expense of the state government. The provision of this amendment

shall terminate at the end of the day on December 31, 2010, unless a majority of the voters cast for the ballot question at the general election in 2010 for the Education and Health Care Protect Amendment to continue.

Assumptions

This initiative petition requires the commissioner of administration to annually determine and certify if the state has a fiscal emergency. If a fiscal emergency does exist, the director of revenue will determine the temporary increase in sales and use tax (up to one cent) needed to generate revenues covering the fiscal deficiency amount for the basic state investment in education and the basic state investment in health care. The general assembly has the option to lower the temporary sales and use tax with a two-thirds vote of each house if action is taken by February 1. Revenues raised are dedicated for elementary and secondary education and health care services for the elderly and disabled and children and their parents and caregivers who are enrolled in the state's Medicaid program. The amendment will terminate on December 31, 2010, unless the voters approve a continuation.

Based on the information from the Office of Administration, the Amendment mandates that a sales and use tax of up to one cent be imposed if the conditions for a "fiscal emergency" are met. The following chart provides an estimate of what an additional one cent and one-tenth of a cent general revenue sales tax would yield in Fiscal Years 2004 – 2007, based upon the following assumptions:

1. Each fiscal year shown is a full year amount.
2. The Fiscal Year 2004 estimate is based on the Governor's revised July 2003 general revenue estimate.
3. Sales tax growth in Fiscal Year 2005 and beyond is assumed to be 2.5%.

Fiscal Year		General Revenue Sales Tax (millions)	Maximum Revenue Yield From a One Cent Increase Full Year	Minimum Revenue Yield From a One-Tenth of a Cent Increase Full Year
2003	Actual	\$1,799.3		
2004*	Estimate	\$1,826.6	\$608.9	\$60.89
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* Although the first year the tax could go into effect is FY 2005, the FYs 2003-2004 are provided for informational purposes.

** The maximum time the tax could be in effect for FY 2005 is six months, but the full year amount is shown for informational purposes.

The total annual costs would be approximately \$104,000 (Department of Revenue \$69,000 and State Auditor's Office \$35,000). The Secretary of State's Office indicated they would anticipate a cost but the amount is unknown.

Officials from the Department of Revenue indicate the Constitutional amendment will have an administrative impact to the department. Funding would be needed for the notification of 150,000 businesses each year at an approximate cost of \$40,200 per year. If the rate is increased in January and then decreased in April, this amount and number of mailings would double. In addition to the notification mailing costs, new sales tax vouchers would need to be printed and mailed at a cost of \$20,263 (printing cost) and \$8,510 (average mailing cost). The total cost for the Department of Revenue would be approximately \$69,000 ($\$40,200 + \$20,263 + \$8,510 = \$68,973$). In addition, temporary additional sales and use taxes would become effective at the end of the day on the first day of January causing taxpayers to be responsible for the collection and remittance of two different tax rates for the month of January. Officials also indicated that any costs associated with this proposal will only be required if the Commissioner of Administration declares a fiscal emergency exists, or a subsequent decrease in the sales tax rate if the Commissioner of Administration declares a fiscal emergency no longer exists. If there is no fiscal emergency, there would be no increase or decrease in the sales tax rate, and therefore, would be no fiscal impact to the Department. Since it is unknown as to whether there will be an increase and a decrease in the sales tax rate, the costs associated with this proposal may be unknown as well.

Officials from the Secretary of State's Office indicate the Constitutional amendment proposed in this initiative petition could ultimately cause affected state agencies to promulgate rules. These rules would be published in the Missouri Register and the Code of State Regulations. Based on experience with other divisions, the rules, regulations and forms issued by the Department of Revenue could require as many as 28 pages in the Code of State Regulations. For any given rule, roughly half again as many pages are published in the Missouri Register as in the Code because cost statements, fiscal notes and the like are not repeated in the Code. These costs are estimated. The estimated cost of a page in the Missouri Register is \$23.00. The estimated cost of a page in the Code of State Regulations is \$27.00. The actual cost could be more or less than the numbers given. The impact of the Constitutional amendment in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded or withdrawn.

The State Auditor's Office would be required to perform an annual audit of the Education and Health Care Protection Fund if the commissioner of administration declares a fiscal emergency. This audit requirement would require additional audit resources. It is estimated that this audit requirement would require 1,000 staff hours and 150 manager hours to complete. This audit would cost approximately \$35,000.

Officials from the Office of Administration assume the Amendment would require the commissioner of administration to perform some of the calculations that the Amendment requires. These calculations pertain to normal budget and financial matters. Thus, there would be no explicit additional costs imposed on the Office of Administration. Budget and Planning indicated the initiative petition should not result in additional costs or savings to that office. Officials from Department of Social Services – Division of Medical Services (DMS) indicated there will be no fiscal impact. Officials from the Department of Elementary and Secondary Education assume the proposal will have no impact on the Department.

Public comments and other input

The State Auditor's Office contacted or obtained information from the Committee on Legislative Research – Oversight Division, the Department of Elementary and Secondary Education, the Department of Revenue, the Department of Social Services, the Office of Administration, the Governor's Office, the Secretary of State's Office, the Speaker of the House of Representatives Office, and the President Pro Tempore of the Senate. Bradley J. Ketcher representing The Policy Group, Inc submitted comments as a proponent of the initiative petition.

Fiscal Note Summary

The constitutional amendment could generate net sales and use tax revenues only if the conditions for a fiscal emergency exist. The range of sales and use tax generated is dependent on the level of fiscal emergency, as determined by the drop in revenue. The indirect fiscal impact on state and local governments, if any, is unknown.

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (No. 03-06)

Subject

Initiative Petition for a proposed statutory change from Husch & Eppenberger, LLC, regarding the Education and Health Care Protection Act – Version 2. (Received November 26, 2003).

Date

December 17, 2003

Description

The proposed statutory initiative petition amends the Revised Statutes by adding an Education and Health Care Protection Act.

This Act will assure there will not be spending reductions in the basic state investment in education and the basic state investment in health care during this period of economic downturn and lessened general revenues.

A one percent (1%) temporary additional sales and use tax will be effective on January 1, 2005 and will cease on December 31, 2007. The provisions of this Act will terminate on June 30, 2009.

The revenues received by the state as a result of this Act shall be deposited in the Education and Health Care Protection Trust Fund and used solely to fund authorized programs encompassed within the basic state investment in education and the basic state investment in health care. The revenues received by the state as a result of this Act will not be used for any other purposes except for costs of collection and refunds.

This Act ensures that the current economic downturn and lessened general revenues will not reduce the state's support for elementary and secondary education and health care services for the elderly and disabled and children and their parents and caregivers who are enrolled in the state's Medicaid Program.

The general assembly will appropriate sufficient monies to assure the authorized state programs encompassed within the basic state investment in education and the basic state investment in health care are fully funded. Any monies appropriated from the Education and Health Care Protection Trust fund will be expended and not withhold. Monies in this fund that are not appropriated and expended will not lapse into General Revenue.

The general assembly will not divert revenues or reduce the level of state funding from other revenue sources for the authorized programs which was in effect for the just

completed year because of the appropriation of funds for such programs from the Act. Any temporary additional sales and use taxes will not be a part of "total state revenues" nor will the taxes be a part of "new annual revenues" and the expenditure of the taxes will not be an "expense of state government".

Books of account will be established by the commissioner of administration to ensure these funds are used and expended only for the purposes authorized by the Act. The State Auditor will provide an annual audit as a result of the taxes from this Act. The provisions of this Act are self enforcing.

Assumptions

This statutory change would impose a temporary additional sales and use tax rate of one percent to be used for education and health care services. The additional rate will become effective January 1, 2005 and will expire on December 31, 2007. Any revenues received will be deemed non-state revenues and will be deposited into the Education and Health Care Protection Trust Fund, which is created by the Act.

Based on information from the Office of Administration, Division of Budget and Planning the following chart provides an estimate of what an additional one cent general revenue sales tax would yield in Fiscal Years 2004 – 2007, based upon the following assumptions:

1. The current general revenue sales tax rate is three cents, which is used to estimate the revenue from an additional one cent sales tax.
2. Each fiscal year shown is a full year amount.
3. The Fiscal Year 2004 estimate is based on the Governor's revised July 2003 general revenue estimate.
4. The OA Division of Budget and Planning estimates sales tax growth in Fiscal Year 2005 and beyond will be 2.5%.

Fiscal Year		General Revenue Sales Tax (millions)	Gross Revenue From a One Cent Increase
2003	Actual	\$1,799.3	
2004*	Estimate	\$1,826.6	\$608.9
2005**	Estimate	\$1,872.3	\$624.1
2006	Estimate	\$1,919.1	\$639.7
2007	Estimate	\$1,967.0	\$655.7

* Although the first year the tax could go into effect is FY 2005, the FYs 2003-2004 are provided for informational purposes.

** The maximum time the tax could be in effect for FY 2005 is six months, but the full year amount is shown for informational purposes.

Fiscal Year	Gross Revenue From a One Cent Increase (millions)	Estimated Refunds***	Net Revenue From a One Cent Increase
2004	\$608.9	\$21.7	\$587.2
2005	\$624.1	\$21.7	\$602.4
2006	\$639.7	\$23.3	\$616.4
2007	\$655.7	\$23.3	\$632.4

*** OA Budget and Planning estimated amount of refunds related to an additional one cent sales and use tax.

As stated in this initiative petition, revenues received by the state as a result of this Act will not be used for any other purposes except for costs of collection and refunds. Past audits by the State Auditor's Office have reported that state law does not require vendors to return sales and use tax refunds and related interest to the original purchaser when applicable.

Officials from the Department of Revenue indicate this Amendment would have an administrative impact. Funding would be needed for the notification of the new rate for 150,000 businesses each year, at an approximate cost of \$40,200 per year. Costs of collection would not increase. The Department of Revenue did not provide an estimate of additional sales tax revenue but instead agreed to have the OA Division of Budget and Planning provide that information.

Officials from the Department of Elementary and Secondary Education indicate this proposal will have no impact on the Department. The cost of this proposal will be borne by taxpayers in the form of increased sales and use taxes. For fiscal impact purposes, we assume receipt of temporary tax collections will begin during FY05; however, distributions to school districts will not likely occur until FY06 pending appropriation by the generally assembly.

Officials from Department of Social Services – Division of Medical Services (DMS) and the Office of Administration indicate there will be no fiscal impact or explicit additional costs imposed.

The State Auditor's Office would be required to perform an annual audit of the Education and Health Care Protection Fund. This audit requirement would require additional audit resources. It is estimated that this audit requirement would require 1,000 staff hours and 150 manager hours to complete. This audit would cost approximately \$35,000.

Public comments and other input

The State Auditor's Office contacted or obtained information from the Department of Elementary and Secondary Education, the Department of Revenue, the Department of Social Services and the Office of Administration.

Fiscal Note Summary

The statutory change would impose a temporary additional sales and use tax of one percent, which would generate additional net revenue of approximately \$602 million in 2005, \$616 million in 2006, and \$632 million in 2007. The indirect fiscal impact on state and local governments, if any, is unknown.

MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (No. 03-07)

Subject

Initiative petition for a constitutional amendment from Husch & Eppenberger, LLC regarding Education and Health Care Protection – Version 3.
(Received December 11, 2003)

Date

December 31, 2003

Description

The initiative petition proposes to amend Article III of the Missouri Constitution by adding one new section, 38(d), to assure that there will not be spending reductions in the basic state investment in education and the basic state investment in health care during periods of economic downturns and lessened general revenues.

Within thirty-five days after this amendment is adopted and thereafter by September 15 of each fiscal year, the commissioner of administration shall determine whether the basic state resources per person for the just completed year are greater or less than the inflation adjusted basic state resources per person for the fiscal year ending June 30, 2001. If they are greater, the commissioner of administration shall certify to the director of revenue and the secretary of state that no fiscal emergency exists and any temporary additional sales and use taxes which are then in effect shall cease to be effective at the end of the day on December 31 following such determination. If they are less, a fiscal emergency shall be deemed to exist and the commissioner of administration shall determine the fiscal deficiency amount and shall issue a certification to the director of revenue.

Within thirty days after the issuance of the certification, the director of revenue shall determine the minimum sales and use tax rate to the nearest one-tenth of one cent, but not more than one cent, that would be needed to generate revenues covering the fiscal deficiency amount and shall issue a certification of such minimum sales and use tax rate.

The temporary additional sales and use taxes shall become effective at the end of the day on the first day of January and shall continue in effect until the end of the day on the following December 31. However, if this section is adopted after the primary election in calendar year 2004 the temporary additional sales and use taxes shall become effective at the beginning of the day on April 1, 2005, and shall continue until the end of the day on December 31, 2005.

The rate certified by the director of revenue shall stand imposed and levied without legislative action. When the commissioner of administration has certified that no fiscal

emergency exists, any temporary additional sales and use taxes then in effect shall stand repealed without legislative action on December 31 following the date of certification.

During January of 2005 or January of any year thereafter while any temporary additional sales and use taxes are in effect, the general assembly by legislative action taken prior to February 1 by a two-thirds vote of the members elected to each house, signified by the presiding officer of each house signing the legislative action in open session may determine and order that either the temporary additional sales and use taxes shall cease to be effective as of the end of the day on March 31st after such legislative action or the rate of the temporary additional sales and use tax shall be lowered to a specified lower tax rate to be effective at the beginning of the day on April 1 after the legislative action.

The revenues received by the state shall be deposited in the Education and Health Care Protection Trust Fund which would be created within the state treasury and used solely to fund authorized programs within the basic investment in education and health care. The revenues received shall not be diverted or used for any other purpose except for costs of collection and refunds.

The provisions of this Amendment are designed to ensure that economic downturns will not reduce the state's support for elementary and secondary education and health care services for the elderly and disabled and children and their parents and caregivers who are enrolled in the state's Medicaid program.

The general assembly shall appropriate annually and/or by supplemental appropriation from the Education and Health Care Protection Trust Fund sufficient monies to assure the authorized state programs encompassed within the basic state investment in education and basic state investment in health care are fully funded. Any monies shall be expended and shall not be subject to withholding or control of the rate of expenditure. Monies in the Education and Health Care Protection Trust Fund which are not appropriated and expended shall not lapse into general revenue.

The general assembly in making appropriations shall not divert revenues from or reduce the level of state funding from other revenue sources for education and health care which was in effect for the just completed year because of the funds in the Education and Health Care Protection Fund. If appropriations made for the fiscal year this Amendment becomes effective divert from or reduce the level of state funding from other revenue sources for such authorized programs; if such appropriations were adopted during the just completed year prior to the effective date of this Amendment; and if such diversions or reductions in the level of state funding for such authorized programs by appropriations were not disproportionate to the diversions or reduction in the level of state funding for all other state programs which were made for the same period, then funds from the Education and Health Care Protection Fund may be appropriated for the fiscal year this Amendment becomes effective to restore the diversions or reductions made by appropriations in the level of state funding from the other revenue sources for such authorized programs.

The commissioner of administration shall establish the books to account for revenues received and for funds appropriated and expended. The state auditor shall provide an annual audit as a result of taxes which become effective pursuant to this Amendment. The state auditor or any taxpayer may bring an action in the circuit court of Cole County against the commissioner of administration and/or the director of revenue to determine whether the certification or determination made is unlawful because it is arbitrary, capricious, and abuse of discretion or not authorized by law.

Any temporary additional sales and use taxes shall not be a part of total state revenues and shall not be an expense of the state government. The provision of this amendment shall terminate at the end of the day on December 31, 2010, unless a majority of the voters cast for the ballot question at the general election in 2010 for the Education and Health Care Protect Amendment to continue.

Assumptions

This initiative petition requires the commissioner of administration to annually determine and certify if the state has a fiscal emergency. If a fiscal emergency does exist, the director of revenue will determine the temporary increase in sales and use tax (up to one cent) needed to generate revenues covering the fiscal deficiency amount for the basic state investment in education and the basic state investment in health care. The general assembly has the option to lower the temporary sales and use tax with a two-thirds vote of each house if action is taken by February 1. Revenues raised are dedicated for elementary and secondary education and health care services for the elderly and disabled and children and their parents and caregivers who are enrolled in the state's Medicaid program. The amendment will terminate on December 31, 2010, unless the voters approve a continuation.

The Department of Revenue did not provide an estimate of additional sales tax revenue but instead agreed to have the Office of Administration – Division of Budget and Planning provide that information. Based on the information from the Office of Administration – Division of Budget and Planning, the Amendment mandates that a sales and use tax of up to one cent be imposed if the conditions for a "fiscal emergency" are met. The following chart provides an estimate of what an additional one cent and one-tenth of a cent general revenue sales tax would yield in Fiscal Years 2004 – 2007, based upon the following assumptions made by the Office of Administration:

1. The current general revenue sales tax rate is three cents, which is used to estimate the revenue from an additional one cent sales tax.
2. Each fiscal year shown is a full year amount.
3. The Fiscal Year 2004 estimate is based on the Governor's revised July 2003 general revenue estimate.
4. Sales tax growth in Fiscal Year 2005 and beyond is assumed to be 2.5%.

Fiscal Year		General Revenue Sales Tax (millions)	Gross Revenue From a One Cent Increase	Gross Revenue From a One-Tenth of a Cent Increase
2003	Actual	\$1,799.3		
2004*	Estimate	\$1,826.6	\$608.9	\$60.89
2005**	Estimate	\$1,872.3	\$624.1	\$62.41
2006	Estimate	\$1,919.1	\$639.7	\$63.97
2007	Estimate	\$1,967.0	\$655.7	\$65.57

* Although the first year the tax could go into effect is FY 2005, the FYs 2003-2004 are provided for informational purposes.

** The maximum time the tax could be in effect for FY 2005 is six months, but the full year amount is shown for informational purposes.

Fiscal Year	Gross Revenue From a One Cent Increase (millions)	Estimated Refunds***	Net Revenue From a One Cent Increase	Net Revenue From a One-Tenth of a Cent Increase
2004	\$608.9	\$21.7	\$587.2	\$58.72
2005	\$624.1	\$21.7	\$602.4	\$60.24
2006	\$639.7	\$23.3	\$616.4	\$61.64
2007	\$655.7	\$23.3	\$632.4	\$63.24

*** OA Budget and Planning estimated amount of refunds related to an additional one cent sales and use tax.

As stated in the initiative petition, revenues received by the state as a result of this Amendment will not be used for any other purposes except for costs of collection and refunds. Past audits by the State Auditor's Office have reported that state law does not require vendors to return sales and use tax refunds and related interest to the original purchaser when applicable.

The total annual costs would be approximately \$104,000 (Department of Revenue \$69,000 and State Auditor's Office \$35,000). The Secretary of State's Office indicated they would anticipate a cost but the amount is unknown.

Officials from the Department of Revenue indicate the Constitutional amendment will have an administrative impact to the department. Funding would be needed for the notification of 150,000 businesses each year at an approximate cost of \$40,200 per year. If the rate is increased in January and then decreased in April, this amount and number of

mailings would double. In addition to the notification mailing costs, new sales tax vouchers would need to be printed and mailed at a cost of \$20,263 (printing cost) and \$8,510 (average mailing cost). The total cost for the Department of Revenue would be approximately \$69,000 ($\$40,200 + \$20,263 + \$8,510 = \$68,973$). In addition, temporary additional sales and use taxes would become effective at the end of the day on the first day of January causing taxpayers to be responsible for the collection and remittance of two different tax rates for the month of January. Officials also indicated that any costs associated with this proposal will only be required if the Commissioner of Administration declares a fiscal emergency exists, or a subsequent decrease in the sales tax rate if the Commissioner of Administration declares a fiscal emergency no longer exists. If there is no fiscal emergency, there would be no increase or decrease in the sales tax rate, and therefore, would be no fiscal impact to the Department. Since it is unknown as to whether there will be an increase and a decrease in the sales tax rate, the costs associated with this proposal may be unknown as well.

Officials from the Secretary of State's Office indicate the Constitutional amendment proposed in this initiative petition could ultimately cause affected state agencies to promulgate rules. These rules would be published in the Missouri Register and the Code of State Regulations. Based on experience with other divisions, the rules, regulations and forms issued by the Department of Revenue could require as many as 28 pages in the Code of State Regulations. For any given rule, roughly half again as many pages are published in the Missouri Register as in the Code because cost statements, fiscal notes and the like are not repeated in the Code. These costs are estimated. The estimated cost of a page in the Missouri Register is \$23.00. The estimated cost of a page in the Code of State Regulations is \$27.00. The actual cost could be more or less than the numbers given. The impact of the Constitutional amendment in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded or withdrawn.

The State Auditor's Office would be required to perform an annual audit of the Education and Health Care Protection Fund if the commissioner of administration declares a fiscal emergency. This audit requirement would require additional audit resources. It is estimated that this audit requirement would require 1,000 staff hours and 150 manager hours to complete. This audit would cost approximately \$35,000.

Officials from the Office of Administration – Budget and Planning assume the Amendment would require the commissioner of administration to perform some of the calculations that the Amendment requires. These calculations pertain to normal budget and financial matters. Thus, there would be no explicit additional costs imposed on the Office of Administration. Office of Administration – Budget and Planning indicated the Amendment should not result in additional costs or savings to the Governor's office. Officials from Department of Social Services – Division of Medical Services (DMS) indicated there will be no fiscal impact. Officials from the Department of Elementary and Secondary Education assume the proposal will have no impact on the Department.

Public comments and other input

The State Auditor's Office used the responses in the assumption section from a previous initiative petition relating to the Education and Health Care Protection Amendment, because the initiative petitions were very similar. Responses received were provided by the Department of Elementary and Secondary Education, the Department of Revenue, the Department of Social Services, the Office of Administration – Budget and Planning, and the Secretary of State's Office. Bradley J. Ketcher representing The Policy Group, Inc submitted comments as a proponent of the initiative petition.

Fiscal Note Summary

The constitutional amendment could generate net sales and use tax revenues only if the conditions for a fiscal emergency exist. The range of sales and use tax generated is dependent on the level of fiscal emergency, as determined by the drop in revenue. The indirect fiscal impact on state and local governments, if any, is unknown.